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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1845/2011, IA No.12075/2011(u/O.XXXIX R.1&2 CPC) &
IA No.17316/2013(u/O.XXXIX R.2A CPC)

YUDHBIR MALIK & ORS Plaintiffs

Through: Mr. Prashant Bhardwaj, Proxy
counsel for Mr. Arvind Kr.Gupta,
Adv. for P-1, 2, 6, 7, 8 & 9.

Versus

RANBIR SINGH & ORS Defendants

Through: Mr. O.P.Gehlaut, Adv. for D-2 to 5.

+ CS(OS) 232/2016, IA No.15951/2019(of the plaintiffs for the
clubbing of the suits)

BHAN SINGH & OTHERS Plaintiffs

Through: Mr. Satinder Singh Mathur with
Mr. Pawan Kumar Gupta,
Mr. Sidhant Agal & Mr. Karan Bhola,
Adv.

Versus

RANBIR SINGH & OTHERS Defendants

Through: Mr. O.P.Gehlaut, Adv. for D-2 to 5.
Mr. Prashant Bhardwaj, Proxy
counsel for Mr. Arvind Kr.Gupta,
Adv. for D-6 to 8, 10 to 12 & 14.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.02.2020**

1. The counsel for the plaintiffs in CS(OS) No.1845/2011, the counsel
for the plaintiffs in CS(OS) No.232/2016 and the counsel for the defendants

CS(OS) 1845/2011 & CS(OS) 232/2016

Page 1 of 4

no. 2 to 5 in CS(OS) No.1845/2011 as well as defendants no.2 to 5 in CS(OS) No.232/2016 appear in pursuance to the order dated 18th November, 2019 in CS(OS) No.232/2016. Vide the said order, the two suits were listed today to explore the possibility of consolidation thereof.

2. The counsels have been heard on IA No.15951/2019 in CS(OS) No.232/2016 for consolidation of the two suits.

3. The counsel for the plaintiffs/applicants in IA No.15951/2019 in CS(OS) No.232/2016 has drawn attention to the family tree of the common ancestor Dhani Ram, set out at internal page 5 of IA No.15951/2019 and has argued (i) that Dhani Ram had two sons namely Shri Chand and Ram Swaroop; (ii) the heirs of Ram Swaroop are the plaintiffs in CS(OS) No.232/2016 and are not parties in CS(OS) No.1845/2011; (iii) CS(OS) No.1845/2011 is *inter se* the heirs of Shri Chand; and, (iv) though both the suits are for partition of same property viz. agricultural land with a well thereon, but while it is the case of the plaintiffs as well as the defendants in CS(OS) No.1845/2011 that the said agricultural land with well thereon fell to the share of Shri Chand son of Dhani Ram only, it is the case of plaintiffs in CS(OS) No.232/2016 that the said agricultural land with well fell to the equal shares of both Shri Chand and Ram Swaroop, sons of Dhani Ram.

4. The counsels agree that the plaintiffs in CS(OS) No.232/2016, who are not parties to CS(OS) No.1845/2011, have nothing to do with the *inter se* disputes between heirs of Shri Chand and that the plaintiffs in CS(OS) No.232/2016 are only interested in a 50% share in the agricultural land and with well thereon which is claimed as the share of Ram Swaroop son of

Dhani Ram.

5. In the aforesaid scenario, it is not appropriate that the suits be consolidated for the purposes of trial inasmuch as the issue for adjudication in the two suits is entirely different, with the plaintiffs in CS(OS) No.232/2016, being not concerned with issues in CS(OS) No.1845/2011.

6. The counsel for the plaintiffs in CS(OS) No.232/2016 states that there would be overlap of evidence between the two suits.

7. Even if that be so, once the application of the plaintiffs in CS(OS) No.232/2016 for impleadement as party in CS(OS) No.1845/2011 has been dismissed with liberty to the plaintiffs in CS(OS) No.232/2016 to take independent remedy and which has been taken by filing CS(OS) No.232/2016, such overlapping of evidence is inevitable.

8. IA No.15951/2019 in CS(OS) No.232/2016 is thus dismissed. However, it will be open to the plaintiffs in CS(OS) No.232/2016 to, in the event of CS(OS) No.1845/2011 being decided prior to decision in CS(OS) no.232/2016, seek appropriate orders with respect to execution of the decree in CS(OS) No.1845/2011.

9. IA No.12075/2011 of the plaintiffs in CS(OS) No.1845/2011 under Order XXXIX Rule 1 and 2 CPC is disposed of, by making absolute the interim order already in force therein.

10. At the present stage of CS(OS) No.1845/2011, it is also not deemed appropriate to keep pending IA No.17316/2013 of the plaintiffs therein under Order XXXIX Rule 2A CPC and IA No.17316/2013 is disposed of.

11. List CS(OS) No.1845/2011 before the Joint Registrar as already scheduled, on 26th March, 2020.

12. List CS(OS) No.232/2016 for framing of issues if any on 6th August, 2020.
13. Affidavits of admission/denial, if not already filed in CS(OS) No.232/2016, be filed before that date.
14. If the affidavits are not filed, consequences in law shall follow.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 26, 2020
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